IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6978 of 2002

with

SPECIAL CIVIL APPLICATION No 5982 of 2002

with

SPECIAL CIVIL APPLICATION No 5956 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JUNAGADH VIBHAGIYA NAGARIK BANK EMPLOYEES CO OP HOUSING
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 6978 of 2002
MR PS CHAMPANERI for Petitioner No. 1
MS MANISHA SHAH AGP for Respondent No. 1-2
MR SANDEEP BHATT for Respondent No. 3-9

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. The petitioner Society has preferred this petition in order to quash and set aside the impugned orders at Annexures - `E' and `F' to the petition and to direct respondent no.3 to fix liabilities on respondents no.4 to 9 as per the report and the order at Annexure `C' to the petition.

2. The petitioner is a Co-operative Society registered under the provisions of the Gujarat Co-operative Societies Act, 1961 (for short, "the said Act"). The Administrator of the petitioner Society had requested the District Registrar, respondent no.2 herein, vide letter dated 18/03/1997, at Annexure-A to the petition, to hold inquiry under Section 86 of the said Act against the office bearers of the petitioner Society. Respondent no.2 herein vide order dated 11/08/1997, at Annexure-B to the petition, instituted inquiry under Section 86 of the said Act into the allegations mentioned in the letter.

3. On the basis of the aforesaid report and in view of the statutory obligation cast upon respondent no.2 herein, inquiry under Section 93 of the said Act was initiated by respondent no.2, District Registrar. Respondent no.3 herein conducted inquiry and exonerated the respondents from the inquiry, at Annexure-E to the petition. Feeling aggrieved by the said order of respondent no.3, the petitioner Society preferred appeals before the Gujarat State Co-operative Tribunal. The said appeals were dismissed by the Tribunal by judgment and order dated 29/12/2000, at Annexure-F to the petition. Hence, these petitions.

4. Mr.P S Champaneri for the petitioner Society has contended that once a report under Section 86 of the said Act has been issued, then the competent authority, under Section 93 of the said Act, has to ascertain only the liabilities of the office bearers for their lapses or negligence under the provisions of the said Act. He has contended that the concerned Authority cannot sit in appeal over a decision taken under Section 86 of the Act.

5. I have heard learned counsel for the parties and perused the relevant documents on record. Section 93 of the Act reads as under;

Section 93 : Power of Registrar to assess damages against delinquent, promoters, etc., -

(1) Where, in the course of or as a result of an audit under section 84, or an inquiry under section 86 or an inspection under section 87, or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorized to make inquiry under section 86, or the person authorized to inspect the books under section 87, or the Liquidator under section 110, that any person who has taken any part, in the organization or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of such audit, inquiry, inspection or order for winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorized by him in that behalf may investigate the conduct of such person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorized under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine. (Emphasis supplied).

(2) The Registrar or the person authorized under subsection (1) in making any order under this section, may provide therein for the payment of the costs or any part thereof of such investigation, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible."

6. Mr.Sandip Bhatt for respondents no.3 to 9 has

contended that the impugned orders at Annexures - `E' & `F' to the petitions have been passed after considering all the evidence on record, and therefore, they cannot be said to be illegal. Ms.Shah learned A.G.P. has contended that the impugned orders of both the authorities below are justified and they do not require any interference from this Court in this petition.

7.1 Therefore, in view of the provisions contained in Section 93 of the Act, the Registrar or a person authorized by him in that behalf, can investigate the conduct of a person or persons and after framing charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorized under the said section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine. The authority in question has not followed this procedure, and therefore, the same is bad in law and the order passed by the competent authority is required to be quashed and set aside. Hence, the order of the Officer exonerating the respondents from the inquiry, at Annexure-E to the petition, and also the order of the Gujarat State Co-operative Tribunal dated 29/12/2000, at Annexure-F to the petition, are quashed and set aside.

7.2 Respondent no.2 herein, District Registrar, is directed to appoint an Officer who shall be entrusted with the duty of ascertaining the liabilities of the respective office bearers of the petitioner Society, namely, respondents no.4 to 9, pursuant to the order under Section 86 of the Act. The said Officer shall pass appropriate orders under Section 93 of the Act, after hearing respondents no.4 to 9 herein. With the above directions, these petitions are allowed. Rule is made absolute to the aforesaid extent in all the petitions with no order as to costs.

(K. S. Jhaveri, J.)
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